IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE JURISDICTION
CRIMINAL APPEAL NO.187 OF 1997

The State of Maharashtra, )
At the instance of Sujata Arjun )
Patil, Age 33 years, )
R/o.Kudave, Taluka - Panvel, )
District - Raigad. ).. Appellant
(Org.Complainant)

Versus

1. Maruti Budhaji Bhopi, )
Age 28 years, )

2. Santosh Budhaji Bhopi, )
Age 24 years. )

3. Ramesh Narayan Bhopi, )
Age 28 years, )

4. Ashok Narayan Bhopi, )
Age 24 years. )

5. Balaram Vithu Bhopi, )
Age 27 years. )

6. Sadashiv Vithu Bhopi, )
Age 28 years. )
All residents of Kudave, )
Tal.Panvel, Dist.Raigad. ) .. Respondents
(Org.Accused)

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Shri D.R.More, APP for State.

Shri N.V.Pradhun with Ms S.D.Khot for Respondents.

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CORAM : V.G.PALSHIKAR &
R.C.CHAVAN, JJ

DATED : 23RD JUNE, 2005.

**ORAL JUDGMENT ( Per R.C.Chavan, J )**

1. This is an appeal by the State challenging acquittal of the respondents by the learned IInd Additional Sessions Judge, Raigad at Alibag.

2. Respondents were arraigned before the Court of Sessions at Raigad for allegedly rioting and committing offences of murder, criminal intimidation, and possessing arms as members of unlawful assembly punishable under Sections 302 and 506 read with Section 149 of Indian Penal Code, Section 37(1) read with Section 135 of the Bombay Police Act, Section 25(C) of the Indian Arms Act and Section 143, 147 and 148 of Indian Penal Code.

3. The prosecution arose out of the incident which led to the death of one Arjun Gharu Patil on 24th October, 1993 at village Kudave, Taluka-Panvel, District Raigad. Village Kudave had two rival groups, one of Patil’s and the other of Bhopi’s. About five years prior to the incident, one Pandurang Narayan Bhopi was murdered. Arjun Gharu Patil, along with some others, was tried for the said murder but was acquitted.

4. On 24th October, 1993, at about 8.15 p.m., Arjun Patil left his house to purchase cells for his

battery (torch) from a neighbouring shop owned by Ranjana Chandane. His wife Sujata Arjun Patil heard some noise from the direction of the shop and so rushed to the said shop. She saw accused persons abusing and coming down from the steps of the shop. She saw her husband with bleeding injuries lying inside the shop. Accused Maruti Bhopi, who was armed with sword, threatened to hit her. Other accused persons were armed with axe, sword, gupti and barchi. According to Sujata Patil, neighbours Shankar, Ganesh, Chandra, etc. saw the incident. On finding that her husband was dead, she gave a report to the police at at about 22.55 hrs. whereupon offences were registered.

5. In course of investigation, the police performed panchanama of spot, conducted inquest upon the dead body and sent the same for post-mortem examination, which revealed that the death had occurred due to shock due to 17 injuries, some of which were incised sharp injuries and fracture of skull. Accused persons were arrested on 28th October, 1993 and their clothes were seized. In course of investigation, at the instance of the accused Ramesh Bhopi, weapons were also recovered. Statements of witnesses were recorded. Properties seized were sent

to Forensic Science Laboratory. Report of the Forensic Science Laboratory shows that most of the articles were stained with human blood. On a bush-shirt and pant of the deceased, stains of blood of group "O" was found. Underwear seized from the person of accused Santosh was also found with stains of blood group of "O". Blood group of accused Santosh was however found to be "B". On completion of investigation, chargesheet was sent to the Judicial Magistrate, First Class, Panvel, who committed the case to the Court of Sessions, Raigad-Alibag, on finding that the offences committed by the accused persons were triable exclusively by the Court of Sessions, Raigad-Alibag.

6. The learned Sessions Judge, Raigad, framed the charges against all the accused punishable under Sections 143, 147, 302, 506 read with Sections 149 of Penal Code, Section 37(1) read with Section 135 of the Bombay Police Act and Section 25(C) of the Indian Arms Act. They pleaded not guilty to the charges. Actual trial commenced before the learned IInd Additional Sessions Judge, Raigad-Alibag. In all, 13 witnesses were examined. The defence of the accused, as revealed from the cross-examination of the prosecution witnesses, their statements under Section 313 of the

Code of Criminal Procedure and also from written statement filed by them, appears to be that of a denial with a further claim that they were at an altogether different place at the time of the incident. Upon considering the evidence in light of the arguments advanced, the learned IInd Additional Sessions Judge proceeded to acquit all the accused persons of the charges levelled against them. Being aggrieved by the said order, the State has preferred the present appeal.

7. We have heard the learned APP for State as also learned counsel for the respondents. The learned APP submitted that there was sufficient evidence to connect the accused to death of the victim Arjun Patil. First, he submitted that there were as many as 17 injuries on the person of victim Arjun, which were noticed by P.W.6 Dr.Murlidhar Chimaji Pawar, in course of the post-mortem examination. These notes of post-mortem are at Exhibit 37. Dr.Pawar's evidence would show that injuries were caused by articles like axe, sword or spear. The notes of post-mortem examination leave no room for doubt that Arjun met with a homicidal death. The question is only whether the learned trial Judge erred in discarding the evidence tendered by prosecution to connect the

accused persons to injuries which led to death of Arjun.

8. According to the learned APP, the prosecution has examined P.W.3 Jyoti, daughter of the victim-Arjun, who was an eye witness to the murderous attack. Jyoti is a child, aged 10 years. The learned APP submitted that the evidence of Jyoti categorically shows that accused No.2 armed with an axe, accused No.3 armed with a sword, were abusing her father and started beating her father with the axe and sword. Her father fell on a bag of salt. She crossed over the bag of salt in the shop, and from the inside door of the shop, she had gone to her house to inform her mother of the incident.

9. Learned counsel for the respondents submitted that the learned trial Judge has rightly discarded the evidence of Jyoti, P.W.3, as thoroughly unreliable. First, he pointed out that the FIR lodged by P.W.1 Sujata, widow of Arjun Patil, at Exhibit-21, makes absolutely no mention of the victim having been accompanied by Jyoti, P.W.3, when he went to Ranjana Chandane’s shop. Secondly, learned counsel for the respondents pointed out that Ranjana’s evidence would make the story of P.W.3 Jyoti improbable. Though in

paragraph 12 of the deposition, P.W.2 Ranjana does state that she saw Jyoti, only at the time of climbing the steps of the shop along with deceased Arjun Patil, she added that she did not see Jyoti thereafter. Ranjana has described her shop which is in the front portion of her house. Behind the shop, there are two rooms, one behind the other. Since she herself had gone inside the house to bring change, she could not see P.W.3 Jyoti from inside the counter of her shop. It is pertinent to note that though P.W.2 Ranjana corroborates Jyoti as regards her entry in the shop with Jyoti's father, she contradicts Jyoti about the manner in which Jyoti left the shop. The learned trial Judge had the benefit of seeing the witness and hearing her in person. Very strong reasons would be needed to overrule the conclusions drawn by the learned Trial Judge.

10. The learned APP next submitted that apart from Jyoti, P.W.3, who had actually seen the incident, her mother P.W.1 Sujata had rushed to the spot immediately after the incident. P.W.5 Vishwanath too, claims to have heard cries of Sujata and went to spot. Both these witnesses state that they saw accused Nos.1 to 6 coming down from the shop of P.W.2 Ranjana Chandane, and at that time, accused Nos.1 and 3 were armed with

swords and Accused No.2 was armed with axe. According to P.W.5 Vishwanath, accused No.4 was armed with gupti and accused Nos.5 and 6 were armed with spears. The learned APP submitted that P.W.1 Sujata is widow of the deceased. She would have no reason to screen the real culprits and name wrong persons as assailants. P.W.5 Vishwanath too has no reason to falsely implicate the accused. Learned counsel for the respondents countered by pointing out that there was a long-standing rivalry between Bhopi and Patil groups, which rivalry, as stated by the prosecution, was at the root of the incident. He, therefore, submitted that in the circumstances, it may not be improbable that the victim's widow Sujata would name enemies of long-standing as assailants. As for P.W.5 Vishwanath, Learned counsel for the respondents drew our attention to the suggestions made to P.W.5-Vishwanath in paragraph 7 of his cross-examination, at Exhibit 34 which though denied would provide a plausible cause for Vishwanath to so depose. It was suggested that the engagement of one Vimal Budhaji Naik, sister-in-law of accused No.1, was broken because Vishwanath had approached one Anil Shantaram Mumbaikar telling him that Vishwanath had love affair with Vimal. It was suggested to the witness that since then, the witness was on cross terms with accused.

11. Learned counsel for the respondents further submitted that if the version of the child witness Jyoti is to be believed for a while, it could rule out the presence of all except accused Nos.2 and 3 at the spot. If they had not at all been to the shop, there would be no reason for other accused persons to come out of the shop of P.W.3 Ranjana Chandane. Therefore, according to learned counsel, it is apparent that P.W.1 Sujata and P.W.5 Vishwanath are exaggerating while stating about complicity of all the accused persons in the incident, and if they are exaggerating to involve four persons who were not at all there, there can be no guarantee that they would not falsely involve the remaining two.

12. Learned counsel for respondents pointed out that the evidence of P.W.2 Ranjana Chandane would give a lie to the entire story reeled out by P.W.1 Sujata, P.W.3 Jyoti or P.W.5 Vishwanath. Ranjana Chandane, P.W.2 is an independent witness. She states in her deposition at Exhibit 23 that the victim had come to her shop to purchase a cell and had given her a currency note of Rs.100/-. She went inside the house to get necessary change. Since she heard some knocking in the shop, she stated that she was coming

with change, and when she came out, she saw the deceased lying on the bag of salt. She states that she has not seen anybody except the deceased in the shop. Thereafter, according to her, P.W.1 Sujata came to the shop.

13. The learned APP pointed out that the witness has been declared hostile. The village was divided in two factions. The witness, a widow resided with her two children and aged mother-in-law without support of an adult male. It was natural that she did not want to get involved in the two factions and therefore, her reticence in not coming out with the truth need not be equated with her not having noticed anything at all. We are afraid that in a criminal trial, such imagination cannot be allowed to take the place of what the witness states in the Court. When P.W.2 Ranjana Chandane states that she neither saw anybody at the shop nor did she hear any shouts, the evidence will have to be taken as it is. It would not be permissible to imagine and to insert in her evidence what Ranjana has not stated.

14. The prosecution had examined one Dharma Namdeo Patil as P.W.4. He curiously stated that when he was at a shop at village Palaspe, Accused No.2 came to the

shop and bragged in his presence that Arjun Patil had been finished. This witness had been declared hostile and then admitted in cross-examination that accused Nos.1, 3, 4 and 5 were also with accused No.2 when the witness was at the shop of one Shete at village Palaspe. In the cross-examination by the defence, this witness denied most of the suggestions. The evidence of this witness shows the extent to which the prosecution can go in juggling up circumstances to rope in the accused. It is ridiculous to suggest that accused No.2 would brag in presence of all at a shop in a neighbouring village that he had killed someone or that all other accused persons would be in his company at such bragging. If, in the context of past enmity, it is imagined for a while that accused No.2 wanted to brag about his victory over the enemies, then it would be difficult to reconcile such bragging with subsequent acts of being unavailable for four days and concealing weapons. In view of this, it would be difficult to say that the view taken by the learned Additional Sessions Judge in respect of testimony of this witness was improbable or perverse.

15. The learned APP next submitted that several articles had been seized at the spot by the Investigating Officer, P.W.12-P.I. Pandurang Ingale,

in presence of P.W.8-the Panch, Bhaskar Thombare. P.W.10 - Ashok Govind Kondilkar states that accused persons were arrested on 28th October, 1993. He proved panchanamas at Exhibits 51 to 54 whereby a number of articles were seized. P.W.10 Ashok Kondilkar also proved seizure of the axe from the house of accused No.3. The prosecution examined Ram Khandu Thombare as P.W.9 to prove discovery by accused Ramesh Bhopi. He had to be declared hostile and was cross-examined. He stated about recovery of various weapons vide memorandum and panchanama, Exhibits 48 and 49, but he omitted to say about the statement of accused Ramesh Bhopi leading to discovery.

16. It is also pertinent to note that memorandum or the panchanama of seizure at Exhibits 48 and 49 do not bear signatures of the accused. Obviously, therefore, mere evidence of the Investigating Officer, P.W.12, PI Ingale would not be adequate to prove the statement leading to discovery and the resultant seizure of articles. Therefore, the learned Trial Judge cannot be said to have been in error in discarding the piece of evidence pertaining to discovery of weapons.

17. All the same, the learned APP tenaciously

contended that there was one piece of evidence which unmistakably pointed to the complicity of accused in the incident. He pointed out that blood samples of the accused had also been taken and had been sent for analysis to the Forensic Science Laboratory and the report in that regard was duly proved at Exhibit-59 by P.W.11-Shrikant Lade, Assistant Chemical Analyser. Occasions of examination of Assistant Chemical Analysers in the Courts to prove their report are rare. Shri Lade seems to have been summoned to throw more light on the results, certified by him in respect of the analysis of the blood stains. According to the report at Exhibit-59, blood group of accused Santosh is "B". The underwear seized from the person of accused, which was marked at Exhibit-10 in the report of the Assistant Chemical Analyser, is found with blood stains of group "O". Clothes of the deceased, which were marked at Exhibits 6 and 7 in the report, too had blood stains of group "O". The learned APP submitted that presence of blood stains of group "O" on the clothes of accused Santosh ought to have been explained by the defence. He pointed out that reasons given in the judgment in respect of these blood stains and the evaluation of evidence of Assistant Chemical Analyser is not satisfactory. The learned Trial Judge seems to have relied on a decision of the Supreme

Court reported in 1980(1) SCC 530 **(Pohalya Motya Valvi v. State of Maharashtra )** where the Court had observed that the blood stains found on the clothes of agriculturist is not an incriminating circumstance. There can be no doubt about this general proposition, but when the stains of a blood group not belonging to that agriculturist are found on his clothing and when they match with those of the victim, some explanation may be warranted.

18. The learned counsel for the respondents had cross-examined the Assistant Chemical Analyser, Shrikant Lade, at length, on desirability of DNA finger printing and also of grouping according to RH factor. While there can be no doubt that DNA fingerprinting would have been the most accurate method of nabbing the culprits, in the given circumstances, it may not be necessary to insist upon DNA finger printing. Probabilities can be deduced from blood grouping which is done and if necessary, inferences can also be drawn therefrom. Likewise, while there can be no doubt about the importance of Rh factors in blood transfusions, for the purpose of identifying the assailants, it may be enough even if "A,B,O" blood grouping is done and insistence of Rh factor may not be necessary.

19. Yet, since the learned Trial Judge seems to have expressed doubts about the reliability of results due to discrepancies in blood grouping, particularly in the context of the fact that the clothes of accused were seized four days after the incident we would not disturb this finding. It is indeed incredible that accused Santosh was wearing same blood stained underwear for four days, when accused persons were supposed to be so careful as to conceal weapons. It may therefore not be proper to brand the conclusions drawn as perverse or improbable. May be, on the same evidence, some other Judge could have drawn different conclusions but that does not make the learned Trial Judge’s conclusions improbable. When two inferences are possible accused must get the benefit of one in his favour.

20. The learned APP further submitted that in this case accused had chosen to file a written statement after they were examined under Section 313 of Code of Criminal Procedure. They had taken the plea of alibi by stating that they were far away in their fields when the incident took place. He submitted that they ought to have proved the plea of alibi and since they had not tendered any evidence in support of plea of

alibi, the learned Trial Judge should have held them guilty.

21. The learned counsel for the respondents rightly countered by pointing out that the plea taken by the accused merely indicates their whereabouts at the time of incident. Accused had denied their complicity in the incident. It was for the prosecution to prove complicity of the respondents-accused. In the absence of any evidence to rope in the accused into the crime, mere statement of accused that they were in their field cannot be used to shift burden on them and hold them guilty of such a serious crime.

22. Learned counsel for the respondents submitted that there were far too many discrepancies in the prosecution evidence to render it reliable. He summed up by recounting that (i) presence of P.W.3 Jyoti was not referred to in the FIR; (ii) P.W.3 Jyoti's presence was not noticed by P.W.2-Ranjana Chandane after the incident; (iii) P.W.3 Jyoti mentions presence of only two accused persons; (iv) P.W.2 Ranjana Chandane, who would have been the most natural witness of the crime, states nothing about assault by the accused on the victim; (v) wholly unnatural

evidence of P.W.4 Dharma about accused No.2's bragging that he had killed Arjun Patil, make the prosecution evidence inadequate to connect the accused to death of Arjun.

23. Learned counsel for the respondents further submitted that though the accused persons were very much in the vicinity of the village, it is not clear as to why they were not arrested for four days and it is incredible after the four days that they continued to wear the clothes having blood stains of the victim. Therefore, according to learned counsel for the respondents, the view taken by the learned Trial Judge was perfectly probable and calls for no interference from this Court.

24. It is settled principle of Criminal Jurisprudence that ordinarily, an appellate criminal court would not substitute its own finding for those recorded by the learned Trial Judge who has the benefit of seeing the witnesses, noting the demeanour and deciding their reliability. It is also settled that when two views are possible and the view taken by the learned Trial Judge is not perverse or improbable, intervention by the appellate Court is uncalled for. In this view of the matter, we find no merit in the

appeal by State and, therefore, dismissed the appeal. Bail bonds, if any, furnished by respondents stand cancelled.

**( V.G.PALSHIKAR, J )**

**( R.C.CHAVAN, J )**